UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

United States of America,

Plaintiff,

v. **Case No. 3:10-cr-113**
Judge Thomas M. Rose

Marc N. Greenberg,

Defendant.

ENTRY AND ORDER GRANTING-IN-PART DEFENDANT'S MOTION TO CONVERT DEFENDANT'S EMERGENCY MOTION REQUESTING A STAY OF SUPERVISED RELEASE CONDITIONS TO A MOTION FOR STAY PENDING APPEAL, DOC. 41, **DENYING DEFENDANT'S MOTION FOR STAY PENDING APPEAL, AND DENYING DEFENDANT'S MOTION FOR LEAVE TO APPEAL *IN FORMA PAUPERIS*.** DOC. 43.

Pending before the Court are Defendant's Motion to Convert Defendant's Emergency Motion Requesting a Stay of Supervised Release Conditions to a Motion for Stay Pending Appeal, Doc. 41, and Defendant's Motion For Leave To Appeal *in Forma Pauperis*. Doc. 43. Both motions are unopposed.

Defendants who seek to stay the imposition of a condition of supervised release pending appeal can move first in the district court and then, if unsuccessful, in the court of appeals for a stay of the condition pending appeal. *United States v. Smart*, 406 Fed. Appx. 14, 18, 2010 WL 4723783, *4 (6th Cir. 2010) (citing Fed. R. Crim. Pro. 38; Fed. R. App. Pro. 8(c) and *United States* *v. Ritter*, 118 F.3d 502, 504 (6th Cir. 1997) (noting that appellant "successfully moved this court for a stay of the [challenged supervised release] condition pending appeal")). Federal courts have inherent authority to grant stays pending appeal under certain circumstances. *United States v. Iron Shield*, 2011 WL 4007684 *2 (D.N.D. 2011). As part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment pending the outcome of an appeal *Scripps–Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9–10 (1942). The Court has no authority that Defendant must first move to stay the imposition of a condition of supervised release in this Court, and that he may not simply apply directly to the Court of Appeals, but, assuming the possibility that it may be required, **GRANTS-IN-PART** Defendant's motion, doc. 41 and converts Defendant's Emergency Motion Requesting a Stay of Supervised Release to a Motion for a Stay Pending Appeal.

The Court turns for guidance to 18 U.S.C. § 3143(b)(1), see *United States v. Iron Shield*, 2011 WL 4007684 *2 (D.N.D. 2011), which provides:

> Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds-
>
> (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and
>
> (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—
>
> (i) reversal,
>
> (ii) an order for a new trial,
>
> (iii) a sentence that does not include a term of imprisonment, or

> (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

18 U.S.C. § 3143(b)(1).

For the reasons stated in the Court's order Granting-in-Part Defendant's Motion to Alter or Amend Judgment, doc. 38, the Court finds Defendant poses a danger to other persons in the community if imposition of the condition is stayed, and the Court **DENIES** Defendant's Motion Requesting a Stay of Supervised Release Conditions Pending Appeal. Doc. 41.

The Court next turns its attention to Defendant's Motion for Leave to Appeal *in Forma Pauperis*. Doc. 43. Federal Rule of Appellate Procedure 24 provides that a party wishing to appeal *in forma pauperis* must file a motion with the district court. The Court has reviewed Defendant's affidavit, and notes that Defendant has not affied that he is in any way estranged from his wife. Indeed, he has informed the Court that he is requesting to reside where she currently resides. Considering her income, the Court **DENIES** Defendant's Motion for Leave to Appeal *in Forma Pauperis*. Doc. 43.

DONE and **ORDERED** in Dayton, Ohio, this Monday, October 1, 2012.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE